IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9819 OF 2004

Reynold Eesly Pengal ...Petitioner

Versus

M/s. Burlingtons' Exports ...Respondents

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Mr. R. Nair, counsel for Petitioner

Mr. R.S. Pai a/w Mosam Mody i/b Haresh Mehta & Co. for Respondents.

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CORAM: B. H. MARLAPALLE, J.

DATED: 17TH JANUARY, 2005

P.C.:-

1. Heard Mr. Nair the learned counsel for the petitioner who was issued a show cause notice dated 1.8.2003 proposing dismissal from service. Show cause notice was followed consequent to her departmental enquiry pursuant to charge sheet dated 20.11.2001. As soon as the show cause notice was issued, the petitioner approached the Labour Court by filing complaint (ULP) No. 185/2003 alongwith an application for interim relief below Exh.U-2. The said application came to be allowed by the IInd Labour Court at Thane vide order dated 1.7.2004. The respondent employer challenged the said order in Revision Application (ULP) No.76 of 2004. The

learned Member of the Industrial Court at Thane by impugned order dated 15.10.2004 allowed the Revision Application and set aside the order passed by the Labour Court below Exh.U-2.

2. The Labour Court referred to the evidence recorded by the Enquiry Officer and recorded the prima facie conclusion that the petitioner was not present in the factory premises when the incidents of violence had occurred on 6.11.2001. Thus, prima facie, the findings were based on the deposition of Mrs. Annie D'Souza, Quality Control Manager. The Industrial Court on the other hand noted that there was no reason for Labour Court to come to this prima facie conclusion regarding the petitioner being away from the factory premises at the relevant time. The Industrial Court in this regard referred to the depositions of Mrs. Annie D'Souza before the Enquiry Officer. She had stated that while she was on duty in the night shift, she was gheroed by the agitating workers and at that time the petitioner had come forward and started banging the bonnet of her fiat car. He thereafter, opened the door and dragged her out and held her arm. He had also threatened and abused her. The Industrial Court, therefore, held that prima facie findings recorded by the Labour Court were pre-mature and the evidence as recorded before the Enquiry Officer could be gone into during

the main trial of the complaint. No error could be found with the reasoning set out by the Industrial Court to set aside the interlocutory order passed by the Labour Court.

3. Under the circumstances, no interference is called for in the impugned order passed by the Industrial Court in this petition under Article 227 of the Constitution of India and therefore, the petition is rejected summarily.

4. Complaint (ULP) No. 185 of 2003 is hereby expedited and it should be decided as expeditiously as possible and preferably within a period of one year from today.